

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
HYATT CORPORATION D/B/A HYATT)	FCC File No. 0002320687
REGENCY ATLANTA)	
)	
For Authority to Operate a Business Radio Service)	
Station in Atlanta, Georgia)	
)	
and)	
)	
Request for Waiver of 900 MHz Application)	
Filing Freeze)	

ORDER

Adopted: January 23, 2007

Released: January 24, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We address a request for waiver filed by the Hyatt Regency Corporation d/b/a Hyatt Regency Atlanta (Hyatt).¹ Hyatt seeks a waiver of the 900 MHz application freeze² prohibiting the filing of new license applications. Hyatt requests a waiver to permit the processing of its application for frequencies formerly authorized to Hyatt under 900 MHz Trunked, Business Radio Service Station WPIM347, Atlanta, Georgia. For the reasons stated below, we grant the request for waiver and permit the processing of Hyatt's application.

2. *Background.* On June 28, 2000, the Commission renewed Hyatt's license to operate the facilities authorized under Call Sign WPIM347. Hyatt operates the station to facilitate security, safety, maintenance, housekeeping, and food service activities at its hotel.³

3. On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze on new 900 MHz applications because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process designed to resolve interference to public safety communications.⁴ The Bureau stated that it would continue to accept applications for license modification and would entertain requests

¹ See FCC File No. 0002320687 (Sept. 20, 2005) Request for Waiver of 900 MHz Freeze (Waiver Request).

² See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005) (*900 MHz NPRM*).

³ See Waiver Request at 1.

⁴ See *900 MHz Freeze PN*, 19 FCC Rcd at 18277-78.

for waiver of the 900 MHz application freeze.⁵ The Commission subsequently released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.⁶

4. On April 4, 2005, the Commission sent Hyatt a license renewal reminder letter.⁷ Hyatt, however, failed to file a timely license renewal application.⁸ On June 28, 2005, the authorization for Call Sign WPIM347 expired by its own terms. On September 20, 2005, Hyatt filed the subject application, which seeks a new permanent authorization to cover its operation of the existing facilities.⁹ Hyatt requests a waiver of the freeze on new 900 MHz licenses applications to permit the processing of its application.¹⁰ Hyatt also submits a letter from Turner Broadcasting System, Inc. (TBS) consenting to Hyatt being relicensed on frequency 935.1875 MHz, on which TBS is authorized under Call Sign WNXV224.¹¹

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹² or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ We conclude that Hyatt has demonstrated that its waiver request would not frustrate the underlying purpose of the freeze.

6. The purpose of the 900 MHz freeze is to preserve adequate spectrum resources during band reconfiguration, as well as to preserve the spectrum landscape until the Commission resolves the geographic licensing issues raised in the *900 MHz NPRM*.¹⁴ As noted above, Hyatt was licensed for Station WPIM347 prior to the decision to institute the 900 MHz freeze. Hyatt does not seek to modify any of its formerly licensed channels. Because the freeze was intended to preserve vacant channels rather than to clear occupied channels, and Hyatt's request is only for continued use of channels that it already occupies and occupied prior to the enactment of the freeze, the underlying purpose of the freeze would not be served by applying it in this case. Grant of the instant application to continue existing operations will not reduce the amount of unoccupied spectrum. Because grant of the underlying application will restore the channels and exact operating parameters of the previous authorization, we believe that grant of this waiver will not interfere with the spectrum needs associated with the 800 MHz proceeding. Given that Hyatt was an established 900 MHz licensee before the 800 MHz reconfiguration decision, it would not have been affected by the application freeze had it filed a timely renewal application. Thus, grant of

⁵ *Id.* at 18278 n.7.

⁶ *See 900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

⁷ *See* FCC Renewal Reminder Letter 3420126 (Apr. 4, 2005).

⁸ *See* Waiver Request at 1.

⁹ *See id.* Hyatt is presently operating under authority of its license for Call Sign WPLJ204 at the same location.

¹⁰ *See id.*

¹¹ Letter dated Sept. 7, 2005 from James A. Seaton, Vice President, Corporate Engineering, Turner Broadcasting System, Inc. to Federal Communications Commission.

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁴ *See 900 MHz Freeze PN*, 19 FCC Rcd 18277; *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

the waiver will not interfere with the purpose of the 900 MHz freeze.¹⁵

7. Grant of the waiver request would serve the public interest. The waiver would permit the processing of an application that seeks to preserve critical communications used daily by hotel employees to coordinate and perform work activities efficiently and safely. Accordingly, we believe that grant of a waiver of the 900 MHz freeze is important for the safe operation of Hyatt's hotel. For the aforementioned reasons, we grant Hyatt's request for waiver of the 900 MHz freeze and permit the processing of its application.¹⁶

8. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's Rules 47 C.F.R. § 1.925, the waiver request filed by the Hyatt Regency Corporation d/b/a Hyatt Regency Atlanta in connection with FCC File No. 0002320687 and dated September 20, 2005 IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) that application FCC File No. 0002320687, filed on September 20, 2005, SHALL BE PROCESSED in accordance with this *Order*.

10. This action is taken under delegated authority pursuant to Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁵ See, e.g., Georgia Pacific Corporation, *Order*, 21 FCC Rcd 21 (WTB MD 2007); Disneyland Resort, *Order*, 21 FCC Rcd 536 (WTB PSCID 2006).

¹⁶ Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications and related petitions in a timely manner. Thus, we admonish Hyatt to conform to this requirement in the future and to take any necessary steps to avoid future occurrences, because the Commission does not routinely grant such waiver requests.